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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 763-769

FRANK FITZGERALD, TRUSTEE FOR MT. FOREST FUR FARMS OF AMERICA, INC.,

Petitioner,

v.

GULF REFINING COMPANY OF LOUISIANA, GULF REFINING COMPANY, HUMBLE OIL AND REFINING COMPANY, SHELL OIL COMPANY, INC., FREEPORT SULPHUR COMPANY, and ERNEST COCKRELL, GULF REFINING COMPANY OF LOUISIANA, ET AL.,

Respondents.

No. 770

FRANK FITZGERALD, TRUSTEE FOR MT. FOREST FUR FARMS OF AMERICA, INC.,

Petitioner,

v.

ERNEST COCKRELL, HIS CURATOR AD HOC, BRUCE NUNEZ, AND THEIR ATTORNEYS, S. W. PLAUCHE, AND THE LAW FIRM OF HEROLD, COUSIN & HEROLD,

Respondents.

No. 771

FRANK FITZGERALD, TRUSTEE FOR MT. FOREST FUR FARMS OF AMERICA, INC., MORAN CORPORATION OF THE SOUTH AND ISAAC S. HELLER,

Petitioners,

v.

ERNEST COCKRELL, SIDNEY L. HEROLD, SUMTER P. COUSIN AND SAMUEL L. HEROLD; AND S. W. PLAUCHE AND S. W. PLAUCHE, JR., COMPOSING THE LAW FIRM OF PLAUCHE & PLAUCHE,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ROBERT S. MARX,
FRANK E. WOOD,
EUGENE D. SAUNDERS,
ELDON S. LAZARUS,
ISAAC S. HELLER,
Attorneys for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941

No._____

In the Matter of
MT. FOREST FUR FARMS OF AMERICA, INC.,
a Delaware Corporation,
Debtor.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC.,
Petitioner,
v.
GULF REFINING COMPANY OF LOUISIANA, et al.,
Respondents.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC.,
Petitioner,
v.
ERNEST COCKRELL, et al.,
Respondents.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC. et al.,
Petitioners,
v.
ERNEST COCKRELL, et al.,
Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(All Italics and bold face type are supplied unless otherwise indicated)

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Frank Fitzgerald, Trustee for Mt. Forest Fur Farms of America, Inc., The Moran Corporation of the South, Inc., and Isaac S. Heller, respectfully represent unto the Court:

This is a petition for writs of *certiorari* to the United States Circuit Court of Appeals for the Sixth Circuit

to review a decision and judgments made and entered in said Circuit Court of Appeals on August 15, 1941 (Hicks, Hamilton and Martin, Circuit Judges sitting). (R. V-2521-22; R. No. 8416-265; R. No. 8894-132)

The decision and judgments sought to be reviewed reversed the judgment of the District Court, and, without considering the merits, dismissed for want of jurisdiction consolidated appeals Nos. 8802-07 and cross-appeal No. 8808, wherein petitioner Frank Fitzgerald, Trustee for Mt. Forest Fur Farms of America, Inc., debtor, was the appellee and cross-appellant and Ernest Cockrell (a resident of Texas), Gulf Refining Company of Louisiana (a Louisiana corporation), Gulf Refining Company (a Delaware corporation), Humble Oil and Refining Company (a Texas corporation), Shell Oil Company, Inc., (a Virginia corporation) and Freeport Sulphur Company (a Delaware corporation) were the appellants and cross-appellees. The decision also reversed the decrees of the District Court and dissolved interlocutory injunctions theretofore entered in two ancillary appeals, cases Nos. 8614 and 8894, wherein the petitioners were appellees and the respondent Ernest Cockrell and his counsel were appellants.

The appeals to the United States Circuit Court of Appeals in the main cases (8802-08) were taken from a judgment entered by the United States District Court for the Eastern District of Michigan, Southern Division, sitting as a court of bankruptcy in the reorganization proceedings of the Mt. Forest Fur Farms of America, Inc., debtor. The judgment, which sought to protect the debtor's property from waste and depletion by the respondents, held the debtor to be the owner of all the land

and seven-eighths of the minerals* in a tract of 52,000 acres of marsh land owned by the debtor and located near the Gulf of Mexico in Louisiana, and further held the respondents to have no color or right of title to said minerals so owned by the debtor. (R. I-336-341)

On application of petitioners the issuance of the mandate of the Circuit Court of Appeals was, on the 15th day of October, 1941, stayed to afford petitioners an opportunity to apply to this Court for a writ of certiorari. (R. V-2587-2592)

SUMMARY STATEMENT

This case relates to the mineral rights (principally sulphur and oil) of Mt. Forest Fur Farms of America, Inc., the debtor herein, in 52,000 acres of marsh land located near the Gulf of Mexico in Louisiana. It is generally acknowledged that this tract is one of the most valuable parcels of mineral land known to the civilized world.

Mt. Forest owns the fee simple title to the land, subject only to a burden of such mineral rights, if any, which the respondents may have (R. IV-1540-45), and for many years it has been in actual, open and undisputed physical possession of said lands. (R. I 312-313)

The debtor is in voluntary corporate reorganization proceedings under the Chandler Act and one of the petitioners herein, Frank Fitzgerald, is the trustee therefor, appointed by the United States District Court at Detroit,

* Due to an outstanding fractional interest, not involved herein, the accurate figure is best described as 7/8ths of 127/150ths, but for the sake of convenience we refer to it herein as 7/8ths.

where the proceedings are pending and where this suit originated. (R. I-305)

Mt. Forest purchased the land involved in 1927 from Ernest Cockrell, one the respondents herein.* The pertinent facts relative to the purchase of said land, as shown by the record are as follows:

On February 3, 1927, Cockrell offered, in writing, to sell the land to Mt. Forest

> "subject to reservation of *one-eighth of the minerals.*" (R. IV-1510)

On February 8, 1927, Cockrell telegraphed Mt. Forest that the land

> "* * * lies in a section that will be developed for oil stop trapping rights alone worth more than price asked for land." (R. IV-1511)

On March 12, 1927, a contract of sale, composed and typewritten by Cockrell personally, was executed, calling for the conveyance of a fee simple title

> "subject to a perpetual minerals reservation *equal to one-eighth of all minerals* * * *." (R. IV-1518; I-309)

On April 11, 1927, in consummation of his contract of sale Cockrell executed and delivered to Mt. Forest a deed of general warranty containing the following reservation:

---

* The original company was a Michigan corporation known as Mt. Forest Fur Farm. The debtor, Mt. Forest Fur Farms of America, Inc., is a Delaware corporation which succeeded to the rights of the Michigan company. (R. I-312) For the sake of convenience, we shall refer to said companies interchangeably as "Mt. Forest".

> "This Vendor is vested with and specially retains for himself, his heirs and assigns, and reserves from this sale, *a perpetual royalty equal to one-eighth of all minerals*, including oil, gas and sulphur, which may be found in, under, upon or beneath the lands herein above described, together with perpetual and exclusive rights to make and execute mineral leases on all or any portion of said lands for the exploration, development, production and marketing of any and all of *said minerals*, and also including perpetual rights of ingress and egress solely for said purpose of exploration, development, production and marketing of *said minerals*, at all times, and likewise the use of so much of the surface of said premises as may be found necessary and convenient for the exploration, development, production and marketing of *said minerals* which may be found and produced from said premises." (R. IV-1541)

This reservation has been aptly described by the Court of Appeals as containing "obvious ambiguity" and being the "fundamental *casus belli*" in the instant case. (R. V-2524-25) The District Court held likewise. (R. I-314)

The factual questions presented by this reservation are twofold: (a) What portion of the minerals did Cockrell reserve under said reservation? and (b) What is the extent of his power to lease? Cockrell and the oil and sulphur company respondents (whose rights emanate solely from Cockrell) claim that Cockrell reserved all the minerals, together with the power to lease all the minerals. Your petitioners asserted, and the Trial Court found as a fact, that only one-eighth of the minerals had been reserved by Cockrell; that his power to lease was limited to said one-eighth; and that neither

Cockrell nor the oil and sulphur company respondents had either color or right of title to or possession of Mt. Forest's seven-eighths of the minerals. (R. I 318-19)

At the time of the purchase of this land by Mt. Forest from Cockrell it was not definitely known that the property contained oil or other minerals. The record plainly shows, however, that Cockrell made full use of the oil possibilities as an inducement towards the sale. (R. IV-1511; I-309)

About a year after the purchase of the land by Mt. Forest, the oil company respondents became interested in the oil possibilities. On March 16, 1928, Cockrell purported to lease an undetermined interest in the minerals in said lands to respondent Gulf Refining Company of Louisiana; and Gulf, without title examination or opinion of counsel, and without the knowledge or consent of Mt. Forest, accepted said lease from Cockrell and paid him a bonus of Twenty-five Thousand ($25,000.00) Dollars therefor. (R. IV 2202; 2204; 1572-4; III-1160-63)

Thereafter, Gulf entered into a pooling agreement with the respondents Shell and Humble. (R. IV-1663-73) Shell had a mineral lease on a then outstanding fractional interest in the property. * Humble had a mineral lease from the State of Louisiana covering lake-bed property not covered in the deed from Cockrell to Mt. Forest. (R. IV-1806)

Oil was discovered on the property in June, 1931. The debtor, which had become involved in financial diffi-

* This fractional interest of 23/150ths was owned by The Moran Corporation of the South, one of the petitioners herein, and was leased to Shell. All of the mineral rights in this fractional interest were reserved by Moran and are not involved herein. (R. IV-1834; 1553-64)

culties and factional strife among its shareholders as early as March 1930, was placed in a state court receivership in Detroit, Michigan, two months after oil was discovered. This receivership, together with the attendant internal dissension, continued until August 15, 1938, when the debtor filed a voluntary petition for reorganization under the Bankruptcy Act. (R. I-348)

In 1932, Gulf, Shell and Humble joined in a sub-lease of their sulphur rights to the respondent Freeport Sulphur Company. (R. IV-1855) In 1933, the largest and most valuable sulphur deposit in the world was discovered in this property. From 1933 to date, over $25,000,000 in oil and sulphur have been extracted from the debtor's property, but not one cent thereof has ever been paid to Mt. Forest, the undisputed fee simple owner in actual possession of the land. (R. I-317)

The oil and sulphur were being extracted from the debtor's property at the rate of more than $6,000,000 a year, when your petitioner, Frank Fitzgerald, immediately upon his appointment as Trustee for the debtor, invoked the jurisdiction of the court appointing him, to preserve and safeguard the debtor's property by enjoining further depletion and exhaustion of its oil and sulphur resources, and to obtain an adjudication of the debtor's interest in the land and the oil and sulphur contained therein, so that a plan of reorganization for the debtor could be promptly effected.

The original petition of the Trustee was filed on August 15, 1938. (R. I-29-37) However, the hearing thereon was adjourned from time to time until the primary jurisdiction of the District Court over the reorganization pro-

ceedings was sustained by the Sixth Circut Court of Appeals and certiorari was denied by this Court. *In re Mt. Forest Fur Farms of America, Inc.*, 103 Fed. (2d) 69 (1939); 308 U. S. 583. Thereupon, an amended petition was filed by the Trustee and an order to show cause was issued by the District Court and duly served upon all of the respondents. (R. I-47-59)

Prior to the trial on the merits, the respondents filed various dilatory motions including motions to quash the service of summons, motions to dismiss for lack of jurisdiction, motions to refer the proceedings to the United States District Court in Louisiana, motions to have the United States Attorney General intervene, and motions to stay proceedings in the District Court in Detroit and to refer the case to the State Courts of Louisiana. (R.I-40-43; 60-180) The United States Attorney General refused to intervene and all the other motions were taken under advisement by the trial judge under Rule 12(d) of the Rules of Civil Procedure, and were all denied at the conclusion of the case. (R. I-366; 369; IV-1500-01)

Although the proceedings were "*summary*" in form and name, they were "*plenary*" in fact. Full formal pleadings were filed by each of the respondents. The trial lasted more than a month. All of the testimony was adduced through witnesses who were examined and cross-examined at length. Hundreds of written exhibits were offered. The record on appeal, of more than 2500 printed pages, shows that all of the respondents had a full and complete opportunity to present their case.

The trial court heard oral arguments lasting two days, printed briefs were filed, and all parties submitted pro-

posed findings of fact and conclusions of law. On June 17, 1940, the trial court handed down exhaustive findings of fact and conclusions of law covering every phase of the case, and holding in substance:

1. That the debtor was the fee simple owner and in actual possession of the land and minerals in controversy;

2. That Cockrell reserved unto himself only one-eighth of the minerals together with the power to lease said one-eighth;

3. That Mt. Forest owned the other seven-eighths of the minerals and that none of the respondents had either a lease to or any right or color of title to or possession of Mt. Forest's minerals. (R. I 305-335)

The judgment entered by the trial court was not in the nature of a summary judgment. It permitted the oil and sulphur company respondents to continue to extract oil and sulphur from the debtor's property on con dition that they account to the Trustee for the value of seven-eighths of the minerals so removed, less the cost of production and a reasonable profit thereon. (R. I-336-343)

From this judgment, the respondents appealed. The Circuit Court of Appeals dismissed the whole proceedings on the grounds that the *res* in controversy was not the land or the minerals contained therein, but a legal concept in the nature of a right to remove the minerals, that the debtor was not in possession of that *res*

at the time of the filing of the petition for reorganization, and hence, that the District Court did not have jurisdiction to hear and determine the controversy. In reaching this conclusion, the Court of Appeals denied jurisdiction upon an erroneous and unwarranted assumption of facts directly contrary to the Trial Court's findings, adduced after a complete hearing on the merits of the controversy.

Both the District Court and the Court of Appeals agreed that the Cockrell reservation contained "obvious ambiguity" and was the fundamental *casus belli* in the case. The District Court, after hearing all the testimony, resolved that ambiguity and found, as a fact, that none of the respondents had any color or right of title to or possession of the seven-eighths of the minerals owned by Mt. Forest. Yet, the Court of Appeals, without disturbing the lower court's findings or making any different findings, and without attempting to resolve the admitted ambiguity in the Cockrell reservation, erroneously concluded, directly contrary to the findings of the trial court, that the oil and sulphur company respondents were exercising possession of an alleged right to remove the disputed minerals under a lease emanating from Cockrell.

The important point is that the extent of Cockrell's power to lease involves the interpretation of the ambiguous reservation and is one of the ultimate issues to be determined. While refusing to pass upon the merits, the Court of Appeals presumed to deny jurisdiction upon an unwarranted assumption as to said ultimate issue, directly contrary to the trial court's findings which are binding upon said appellate court unless clearly erroneous.

The error of the Court of Appeals becomes even more grievous in view of the past history of the litigation involving Mt. Forest's mineral rights in the Plaquemines Parish property. In March, 1936, while the debtor was in state court receivership, suit was instituted by it against Cockrell and the oil and sulphur company respondents in the state court in Plaquemines Parish, Louisiana. All of the respondents immediately filed exceptions to the jurisdiction over their persons. Cockrell, who was a resident of Texas, subsequently withdrew his exceptions and filed a general appearance and an answer. The oil and sulphur company respondents, however, were still standing upon their jurisdictional exceptions at the time the petitioner was appointed trustee for the debtor in August, 1938. (R. IV-1959-91).

The Trustee, therefore, being stymied from proceeding in the Louisiana litigation, invoked the jurisdiction of the Bankruptcy Court in Detroit. Some nine months thereafter, in an effort to strengthen their attack on the jurisdiction of that Bankruptcy Court, the oil and sulphur companies withdrew their exceptions to the jurisdiction of the Plaquemines Parish court, which exceptions had prevented action therein for three years. (R. IV-1989). The Trustee, however, has never in in any way ratified, adopted or approved said Plaquemines Parish litigation and has never become a party thereto.

When at last the Trustee was able to corral all of the respondents into one proceeding, and for the first time was able to secure a trial on the merits and had secured a ruling in his favor thereon from the District Court, the Court of Appeals dismissed the entire proceeding upon narrow, technical, jurisdictional grounds and or-

dered the Trustee to proceed once more in some other jurisdiction. If the Trustee can not maintain the instant proceeding, then, the danger is that the shareholders of Mt. Forest may, for all practical purposes, be left remediless to determine and enforce their rights to one of the most valuable mineral tracts in the world, or at least, will be without an adequate forum where jurisdiction and venue exist over all the respondents.

OPINIONS BELOW

At the conclusion of taking proofs, the District Court orally denied all respondents' jurisdictional motions without opinion. (R. IV-1500-1501). On June 17, 1940, the trial court handed down exhaustive findings of fact and conclusions of law (the same being separately printed for the convenience of this Court) and a judgment was entered, based on said findings, on July 10, 1940. (R. I-305-335; 336-343). Separate findings of fact and conclusions of law and interlocutory injunctions were issued without opinion in the two ancillary proceedings on February 22, 1940, and November 10, 1940. (R. 1846-231, 232; R. 8894-105, 107).

The Sixth Circuit Court of Appeals in a written opinion handed down August 15, 1941, reversed the judgment of the District Court on the motions to dismiss the Trustee's proceedings, dismissed the Trustee's cross-appeal, and dissolved the injunctions in the two ancillary proceedings. (R. V-2523-46). The petitioners' petition for rehearing was denied on October 11, 1941, without written opinion. (R. V-2571). The decision of the Circuit Court of Appeals is reported in 122 Fed. (2d) 232.

JURISDICTION

The judgments of the Circuit Court of Appeals, to be reviewed, were entered August 15, 1941, and the order denying the petition for rehearing was entered October 11, 1941.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (Title 28 U. S. C., Section 347).

STATUTES INVOLVED

Section 102 of Chapter X of the Bankruptcy Act, commonly known as the Chandler Act (Title 11 U. S. C., Sec. 502):

> "The provision of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 23 * * * shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapter I to VII, inclusive. * * * * "

Section 111 of Chapter X of the Chandler Act (Title 11 U. S. C., Sec. 511):

> "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Section 23 of the Bankruptcy Act (Title 11 U. S. C., Sec. 46):

> "a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceeding had not been instituted and such controversies had been between the bankrupts and such adverse claimants."
>
> "b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act."

THE QUESTIONS PRESENTED

1. The fundamental legal question presented in this case relates to the extent of the jurisdiction of a District Court, sitting as a Court of Bankruptcy, in corporate reorganization proceedings, under Sections 102 and 111 of Chapter X of the Chandler Act, to enjoin interference with, and depletion or waste of, the bankrupt's property located outside of the territorial limits of the district, to determine the extent of the debtor's interest in said property, and to that end to send the necessary process of service throughout the United States.

2. Likewise involved is the important question of whether there has been a shift from "*possession*" to "*property interest*" in determining the jurisdiction of

the bankruptcy court over the property of the debtor in corporate reorganization proceedings under the above mentioned sections of the Chandler Act, as contrasted with straight bankruptcy.

3. With the elimination of the applicability of Section 23 of the Bankruptcy Act to corporate reorganization proocedings, the further question is presented of the right of the court in which the reorganization proceedings are pending to hear and determine controversies as against adverse claimants, when such a determination is a necessary prerequisite to effecting a plan of reorganization for the debtor, and to send its process outside of the district in order to obtain service upon such adverse claimants.

4. Finally, there is presented the question of the right of a Court of Appeals to refuse to pass upon the merits of the issues involved and to dismiss the proceeding for lack of jurisdiction, when, by the very nature of the case, jurisdiction can not be determined without first passing upon the merits, and when further, the jurisdictional decision of the Court of Appeals is grounded upon an erroneous assumption of the ultimate issues, directly contrary to the findings of fact of the trial court handed down after a complete hearing on the merits.

REASONS RELIED UPON FOR ALLOWANCE OF WRITS OF CERTIORARI.

The extent of the jurisdiction of a District Court, sitting as a Court of Bankruptcy in reorganization proceedings, over the debtor's property located outside the dis-

trict, and the extent of its power to protect such property by the issuance of process for service anywhere in the United States, are matters of special importance because:

1. This Court has not heretofore passed directly upon these questions. This Court has not had before it for construction and interpretation Sections 102 and 111 of the Chandler Act, and particularly it has not been called upon to determine the effect of eliminating the applicability of Section 23 to corporate reorganization proceedings.

2. The decision of the Sixth Circuit Court of Appeals in the instant case is in direct conflict with a decision of the Fourth Circuit Court of Appeals on the same subject, to wit, *Warder v. Brady*, 115 Fed. (2nd) 89 (1940). In the latter case the Fourth Circuit Court not only held that possession was not the test of jurisdiction of the bankruptcy court in corporation reorganizations, but in construing the elimination of the applicability of Section 23 to such proceedings said:

> "It seems clear that the bankruptcy court under Chapter X has jurisdiction to entertain all suits to which its trustee or the debtor in possession is a party, even though they be instituted against adverse claimants."

3. The decision of the Sixth Circuit Court of Appeals in the instant case is in conflict with applicable decisions of this Court, to wit, *Continental Illinois National Bank*

&Trust Co. v. Chicago, Rock Island & Pacific Railway Co., 294 U. S. 648 (1935) and *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478 (1940).

4. The questions involved are constantly arising in other reorganization proceedings throughout the land, and for the reasons above stated should be authoritatively settled by this Court.

5. The complete disregard by the Court of Appeals in the instant case of the findings of fact of the Trial Court constitutes a departure so far removed from the accepted and usual course of judicial proceedings, as specifically required under Rule 52 (a) of the Rules of Civil Procedure, as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioners pray that writs of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record of the proceedings in cases numbers 8802-08, entitled on its docket "Gulf Refining Co. of Louisiana, et al., v. Frank Fitzgerald, Trustee"; and case number 8614 entitled on its docket "Ernest Cockrell, et al., v. Frank Fitzgerald, Trustee", and in case number 8894 entitled on its docket "Ernest Cockrell, et al, v. Frank Fitzgerald, Trustee, et al."; and that said judgments of the said Circuit Court of Appeals in said cases may be reversed by this Honorable

Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet.

And your petitioners will ever pray.

ROBERT S. MARX,
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